

15756

Nos. ~~15765~~ and 15851 ✓

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

No. 15765<sup>36</sup>

THEODULO NAVA REYES,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

No. 15851

FEDERICO PEREZ,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

## BRIEF OF APPELLEE.

---

LAUGHLIN E. WATERS,

*United States Attorney,*

LLOYD F. DUNN,

*Assistant United States Attorney,*

*Chief, Criminal Division,*

WILLIAM A. SEAVEY,

*Assistant United States Attorney,*

600 Federal Building,

Los Angeles 12, California,

*Attorneys for Appellee.*

**FILED**

APR 18 1958

PAUL P. O'BRIEN, CLERK



## TOPICAL INDEX

	PAGE
Jurisdictional statement .....	1
Statement of the case.....	2
Summary of argument.....	2
Argument .....	3

### I.

The convicted offender need not have been imprisoned for more than one year to be required to register.....	3
---	---

### II.

The classifications under the statute are fair and reasonable and therefore valid.....	3
--	---

### III.

Wilfulness is not a necessary ingredient of the statute nor of indictments based thereon.....	3
---	---

### IV.

The statute is valid under the self-incrimination clause of the Fifth Amendment of the Constitution and does not unreasonably restrict the right to travel.....	7
---	---

Conclusion .....	7
------------------	---

### Appendices :

Appendix I. Notice of requirements of Section 1407....App. p. 1	
Appendix II. Operational statistics re Section 1407.....App. p. 2	

## TABLE OF AUTHORITIES CITED

CASES	PAGE
Blackford v. United States, 247 F. 2d 745.....	5
Lambert v. California, 355 U. S. 225.....	3, 4, 5, 6
Morissette v. United States, 342 U. S. 246.....	4
Nebbia v. New York, 291 U. S. 502.....	4, 5
United States v. Balint, 258 U. S. 250.....	4
United States v. Behrman, 258 U. S. 280.....	4
United States v. Eramdjian, 155 Fed. Supp. 914.....	3, 4, 5, 7

### STATUTES

United States Code, Title 18, Sec. 1407 .....	1, 4, 5, 6
United States Code, Title 28, Sec. 1291.....	1
United States Code, Title 28, Sec. 1294.....	1
United States Constitution, Fifth Amendment.....	2

Nos. 15765 and 15851

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

No. 15765

THEODULO NAVA REYES,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

No. 15851

FEDERICO PEREZ,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

## BRIEF OF APPELLEE.

---

### Jurisdictional Statement.

These are appeals from judgments of conviction in the United States District Court for the Southern District of California, Southern Division. The jurisdiction of the District Court arose under Title 18, United States Code, Section 1407 (border crossings-narcotics addicts and violators). The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, Sections 1291 and 1294.

### Statement of the Case.

The appellee concurs in the statement made by appellants.

### Summary of Argument.

#### I.

The convicted offender need not have been imprisoned for more than one year to be required to register.

#### II.

The classifications under the statute are fair and reasonable and therefore valid.

#### III.

Wilfulness is not a necessary ingredient of the statute nor of indictments based thereon.

#### IV.

The statute is valid under the self-incrimination clause of the Fifth Amendment of the Constitution and does not unreasonably restrict the right to travel.

## ARGUMENT.

Appellee hereby refers to and incorporates the opinion of the Honorable James M. Carter in *United States v. Eramdjian*, 155 Fed. Supp. 914, and contends that it answers and disposes of each of Appellant' arguments.

### I.

**The Convicted Offender Need Not Have Been Imprisoned for More Than One Year to Be Required to Register.**

*United States v. Eramdjian*, 155 Fed. Supp. 914, 931-932.

This answers and disposes of Appellants' argument I on pages 7-10 of their brief.

### II.

**The Classifications Under the Statute Are Fair and Reasonable and Therefore Valid.**

*United States v. Eramdjian*, 155 Fed. Supp. 914, 929-931.

This answers and disposes of Appellants' argument II on pages 10-15 of their brief.

### III.

**Wilfulness Is Not a Necessary Ingredient of the Statute nor of Indictments Based Thereon.**

*United States v. Eramdjian*, 155 Fed. Supp. 914, 924-925.

This answers and disposes of Appellants' argument III on pages 15-19 of their brief. *Lambert v. California*, 355 U. S. 225, decided after *United States v. Eramdjian*, *supra*, and cited by Appellants, is not controlling in this situation for the reasons hereinafter stated.

The Court of Appeals for the Ninth Circuit would have to overrule the Supreme Court decisions in *United States v. Balint*, 258 U. S. 250, and *United States v. Behrman*, 258 U. S. 280, before it could reverse the holding of *United States v. Eramdjian, supra*. There is an excellent discussion of these cases, including *Morissette v. United States*, 342 U. S. 246, in *United States v. Eramdjian, supra*, at pages 924 and 925. The Supreme Court did not intend to control the state of facts herein by its decision in *Lambert v. California*, 355 U. S. 225, decided after *United States v. Eramdjian, supra*, and cited in Appellants' brief at page 15.<sup>1</sup>

The Supreme Court faces each new situation as it arises with a practical view toward whether it satisfies the guaranty of due process. In *Nebbia v. New York*, 291 U. S. 502 at p. 525, it is said that “\* \* \* The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. \* \* \* And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. \* \* \*” There are wide differences between the facts in the *Lambert* decision and in the present case. One involves a municipal ordinance requiring felons in Los Angeles to register their names with the police. 18 U. S. C. 1407, is designed to hinder and prevent the international traffic in narcotics by requiring addicts or violators to register their trips into foreign

---

<sup>1</sup>See Appendix I for actions taken by the Federal government to warn those required to register.



lands. It is stated at page 229 of the *Lambert* decision that "At worst the ordinance is but a law enforcement technique designed for the convenience of law enforcement agencies through which a list of the names and addresses of felons then residing in a given community is compiled." The test of a violation of that municipal ordinance is mere presence in the city for over five days. Under 18 U. S. C. 1407, a duty to register arises only if the citizen departs from or enters into the United States. The act of crossing and recrossing the international border is connected with the larger activity which it is the purpose of the statute to control; namely, the international traffic in narcotic drugs, and the spread of drug addiction. This federal statute falls within the demands of *Nebbia v. New York*, *supra* for it is a practicable way toward accomplishing the comprehensive aim of the Narcotic Control Act of 1956 of which it is an integral part. *United States v. Eramdjian*, *supra*, p. 918. In *Blackford v. United States*, 247 F. 2d 745, 752, the Court of Appeals for the Ninth Circuit takes judicial notice that the Mexican-California border is one of the major centers for importation of narcotic drugs into the United States. A reasonable way to substantially hinder and prevent the international traffic in narcotics is to require addicts and prior narcotic violators, who are thus in responsible relation to the danger, to register their travels between Mexico and the United States. When such a person registers his return from Mexico the custom officials are thereby alerted to watch for concealed narcotics or to detect that a registrant is then under the influence of narcotics.<sup>2</sup>

---

<sup>2</sup>See Appendix II for statistics showing operational statistics in connection with Section 1407.

Likewise, when an addict or violator fails to register, it is possible to take steps toward achieving the aim of the Narcotic Control Act by his arrest and conviction. Appellant Federico Perez was found to be addicted to Heroin at the time of sentencing; he was sentenced to be imprisoned for two years and it was recommended that he be sent to a United States Public Health Service hospital for the treatment and cure of the narcotics habit. The commitment of Federico Perez can be said to have a real and substantial relation toward preventing the spread of drug addiction. Appellant Teodulo Reyes as a narcotic violator was sentenced to imprisonment for one year and to pay a fine of \$100.00. The execution of the sentence was suspended as to imprisonment only and defendant was placed on probation for three years, one of the conditions being that he does not enter Mexico without first obtaining permission from the Probation Officer and that he not use nor associate with known users of narcotics in any form. The above conditions of probation can substantially help control the international traffic in narcotic drugs.

The registration requirement is a reasonable means toward accomplishing the object sought to be obtained in 18 U. S. C. 1407. The class of persons who must register under the federal statute is narrower and more closely related to a particular known danger than is the ordinance in *Lambert v. California*. The crossing of an international border is more singular than is entering or remaining in a given city and more likely to put one on notice that some search or registration is required. There is only one United States Code, whereas, there are ordinances of many municipalities. The large volume of vehicle, passenger and pedestrian traffic through the port

of San Ysidro, California should be a fact of which the court takes judicial notice. There is no practical step which can be taken which has not already been done to assure that every United States citizen who is an addict or a narcotic violator will have knowledge of his duty to register.

#### IV.

**The Statute Is Valid Under the Self-Incrimination Clause of the Fifth Amendment of the Constitution and Does Not Unreasonably Restrict the Right to Travel.**

*United States v. Eramdjian*, 155 Fed. Supp. 914, 925-929.

This answers and disposes of Appellants' argument IV at pages 19-26 of Appellants' brief.

#### Conclusion.

For the above stated reasons Appellee respectfully submits that the judgment should be affirmed.

Respectfully submitted,

LAUGHLIN E. WATERS,

*United States Attorney,*

LLOYD F. DUNN,

*Assistant U. S. Attorney,*

*Chief, Criminal Division,*

WILLIAM A. SEAVEY,

*Assistant U. S. Attorney,*

*Attorneys for Appellee.*







## APPENDIX I.

### Notice of Requirements of Section 1407.

18 U. S. C. 1407 was enacted on July 18, 1956. In November, 1956, the Director of the Bureau of Prisons directed that all inmates of federal and correctional institutions be furnished a copy of 18 U. S. C. 1407 and certify that he has read it before discharge. On January 7, 1957, four signs were posted at the port of entry, San Ysidro, California, warning narcotic users and violators that they were required to register before entering Mexico and upon returning to the United States. Custom Officials at the port of San Ysidro began to enforce the statute in February, 1957.

## APPENDIX II.

### Operational Statistics Re Section 1407.

During the six month period beginning September 1, 1957, and ending on February 28, 1958, 288 persons registered at the port of San Ysidro, California, as required by 18 U. S. C. 1407, a total of 1418 times.

Eleven addicts were arrested for failure to register of which seven were later convicted and the cases of four are pending. Each of the seven convicted addicts was sentenced to the custody of the Attorney General for periods ranging from eighteen months to two years with the recommendation that they be sent to U. S. Public Health Service Hospital for treatment and cure of the narcotic habit.

Thirty-nine narcotic violators were arrested of which fourteen were convicted and nine cases are pending, and the rest were dismissed. Two of the fourteen convicted violators were sentenced to the custody of the Attorney General and the other twelve were given probation.

During the same period at the San Ysidro port there were fifty-two seizures of marihuana involving about 200 pounds. Seventy-seven persons were arrested for smuggling marihuana of which twenty-one were addicts, five prior narcotic violators, two addicts who were also narcotic violators, and two narcotic violators who used marihuana. Eighteen of those arrested were users of marihuana.

There were sixteen seizures of Heroin totaling about twenty-nine ounces. Nineteen persons were arrested for smuggling Heroin of which eight were addicts who were also prior narcotic violators. Five were addicts and one a prior narcotic violator.